

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

IVAN JOHNSON,

Plaintiff,

v.

ROBERT TUCKWELL, PAUL SUMNIGHT,
BELINDA SCHRUBBE, CHARLENE REITZ,
JEREMY STANIEC, BENJAMIN HILBERT,
DANIEL BRAEMER, BONNIE LYND,
JERRICA EAGER and JOHN DOE,

Defendants.

ORDER

12-cv-891-bbc

Pro se prisoner Ivan Johnson is proceeding on a claim that defendants violated the Eighth Amendment by refusing to provide a special diet that plaintiff needed after surgery. In his complaint, plaintiff identified one of the defendants as Bryan Umentum, but Magistrate Judge Stephen Crocker substituted a John Doe defendant for Umentum when the Department of Justice said that no one named Bryan Umentum was employed by the Wisconsin Department of Corrections. Dkt. #12. In the preliminary pretrial conference order, the magistrate judge directed plaintiff to conduct discovery to determine the name of the John Doe defendant. Dkt. #14.

Plaintiff served an interrogatory on defendants in an attempt to discover the John Doe defendant's identity, providing a description of the officer and the relevant time and

place he would have been working. In addition, plaintiff stated that he continued to believe that the officer's last name was Umentum. In response, defendants stated that no one matched plaintiff's description and that no one named Umentum was working on plaintiff's unit at the relevant time. Dkt. #15.

As it turns out, that was incorrect. After plaintiff obtained the employee logs for his unit for the relevant time, he discovered that someone named Tom Umentum had worked on the unit then.

Plaintiff has filed a motion for sanctions, dkt. #31, but I am denying it because plaintiff has not shown that defendants' failure to identify Umentum was an intentional attempt to conceal information or otherwise prevent plaintiff from prevailing on his claim. However, I will give plaintiff an opportunity to amend his complaint to add Umentum as a defendant. Plaintiff need not draft a new complaint from scratch. He may use a copy of his original complaint, crossing out all references to "Bryan Umentum" and replacing them with "Tom Umentum." I have included a copy of the complaint with this order. Finally, I note that the Department of Justice has agreed to accept service on behalf of Umentum and to answer the amended complaint within 10 days after plaintiff files it. Dkt. #32.

ORDER

IT IS ORDERED that plaintiff Ivan Johnson's motion for sanctions, dkt. #31, is DENIED. Plaintiff may have until December 27, 2013, to file an amended complaint to add

Tom Umentum as a defendant.

Entered this 13th day of December, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge